



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TRG
Docket No: 3706-00
30 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 22 April 1999 at age 20. On 12 May 1999 you admitted that you did not tell your recruiter that you were still on supervised probation following a conviction of driving under the influence. Your case was referred to the legal office because you were not eligible for enlistment while in that status.

On 21 May 1999 you made a statement as follows:

I realized I was bisexual about 2 years ago. My first homosexual encounter happened when I was 19 years of age with a friend of mine. If I stay in the military I will involve myself in homosexual activity.

On 26 May 1999 you were notified of separation processing based on your statement that you were homosexual and fraudulent enlistment. After review the separation authority directed an entry level separation due to your admission of homosexual conduct. At that time you were not recommended for reenlistment and were assigned an RE-4 reenlistment code.

You state in your application that you lied about your homosexuality in order to gain discharge. You now regret your actions and desire a change in the reenlistment code so that you can reenter the military.

The Board was aware that it is well settled in the law that an individual who perpetrates a fraud in order to be discharged should not benefit from that fraud when it is discovered. In addition, the Board could not tell if you were lying then or are lying now. Given the circumstances, the Board concluded that a change in the reason for your discharge was not warranted.

Regulations require the assignment of an RE-4 reenlistment code when an individual is discharged due to homosexuality or fraudulent enlistment. Since you have been treated no differently than others discharged for either of these reasons, the Board concluded that a change in the RE-4 reenlistment code was not warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director